

1 KNUT S. JOHNSON (CSB 125725)  
2 LAW OFFICE OF KNUT S. JOHNSON  
3 1010 Second Avenue, Suite 1850  
4 San Diego, California 92101  
5 (619) 232-7080 (Phone)  
6 (619) 232-7324 (Fax)  
7 [knut@knutjohnson.com](mailto:knut@knutjohnson.com)

8 JERROLD M. BODOW (CSB 79794)  
9 Jerrold M. Bodow, A.P.L.C.  
10 1010 Second Avenue, Suite 1000  
11 San Diego, California 92101  
12 (619) 231-0724 (Phone)  
13 (619) 238-6738 (Fax)  
14 [jbodow@gmail.com](mailto:jbodow@gmail.com)

15 Attorneys for GLENDA CASTILLO ABALOS

16 UNITED STATES DISTRICT COURT  
17 SOUTHERN DISTRICT OF CALIFORNIA

18 UNITED STATES,

19 Plaintiff,

20 vs.

21 GLENDA CASTILLO ABALOS

22 Defendant.

CASE NO. 08 cr 1557-WQH

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
MOTIONS:**

- 1) FOR DISCOVERY;
- 2) FOR A FURTHER MOTION  
HEARING AFTER  
GOVERNMENT  
COMPLIANCE WITH  
DISCOVERY

Date: August 4, 2008

Time: 2:00 p.m.

**I.**

**FACTS AND PROCEDURAL STATUS**

23 The government has indicted Ms. Abalos for Possession of Marijuana with  
24 the Intent to Distribute, in violation of 21 USC § 841(a)(1). That indictment  
25 stems from the April 30, 2008 arrest of Ms. Abalos at the Interstate 8 checkpoint  
26 within the Southern District of California. At approximately 5:56 a.m. on that  
27 date, Ms. Abalos approached the checkpoint driving a red Dodge Stratus. In

1 pre-primary a narcotics detection dog alerted on the red Dodge Stratus, and  
2 agents sent the car to secondary inspection. At secondary inspection agents  
3 discovered 25 marijuana bricks in the trunk of the red Dodge Stratus.

4 Sometime after the search, the government obtained a search warrant for  
5 the search of Ms. Abalos' home. Agents then executed that warrant. In a  
6 written request, the defense has asked the government to provide: "a copy of the  
7 warrant, the affidavit, the inventory, any reports generated, and any other  
8 materials related to the warrant. This includes any items seized."

9 On June 10, 2008, this Court entered the following order:

10 "It is ordered that the U.S. Government, including the  
11 U.S. Department of Homeland Defense and D.E.A.  
12 preserve the vehicle, contraband and secondary  
13 inspection videotape, if any seized in this case, until  
further of this Court."

14 After the initial batch of discovery, the defense also made the following  
15 written request for discovery to the prosecution:

16 (1) If there was a video or if there were photos taken of  
17 the checkpoint where the stop occurred we would like  
18 a copy. The time period we would like is thirty  
19 minutes before the stop to thirty minutes after. Please  
20 ask your case agent to inquire, but I note that the  
21 Dyson report states that "Copies were made of the  
22 video feed of the primary and secondary inspection  
23 areas." We would like both tapes. I note that there is  
an order that you preserve the video, if any, from  
secondary. However, we would also like the video, if  
any, of primary inspection.

24 (2) Were there any fingerprints taken from the car or  
25 marijuana?  
26  
27  
28

1 (3) We would also like any TECS reports for the  
2 vehicle. This includes any TECS reports showing  
3 movement into the US, out of the US, or within the US.

4 (4) Copies of any photographs or other evidence  
5 related to this case.

6 (5) Any discovery related to Rita Melgoza, the  
7 registered owner of the vehicle.

8 (6) A copy of N-2, the papers found in Ms. Abalos'  
9 possession.

(7) A copy of the video of the marijuana extraction.

10 The government responded in writing to that request as follows:

11 There is new discovery available now – reports of the  
12 search, and other reports.

13 A copy of the affidavit and search warrant are  
14 forthcoming.

15 Also coming is video from primary and secondary – no  
16 other video was taken.

17 Fingerprints were not taken from the car or marijuana.

18 I have requested all physical items seized from the  
19 vehicle, and will let you know when they are available  
20 for inspection.

21 Also, to date, the case agent does not believe that TECS  
22 has been generated, but we will look into that as well.

23 Finally, see the attached photos – these may come in  
24 several e-mails.

25 The defense is still waiting on the following items:

26 (1) A copy of the affidavit and search warrant.

27 (2) The videos from primary and secondary.

28 (3) The video of the marijuana being removed from the  
vehicle.

(4) An inspection of the items seized.

1 (5) Discovery related to Rita Melgoza, the registered owner of  
2 the vehicle.

3 (6) A copy of N-2, the papers found in Ms. Abalos'  
4 possession.

5 The defense needs to have items of discovery to evaluate and potentially  
6 litigate certain issues, such as: the suppression of evidence found pursuant to  
7 the warrant; suppression of the search of the vehicle at the checkpoint, and;  
8 other issues. The defense also needs the above items of discovery to prepare for  
9 and defend this case at trial.

## 10 II.

### 11 MS. ABALOS IS ENTITLED TO DISCOVERY

12 Ms. Abalos previously filed with this Court a general motion for  
13 discovery. This motion is for an order that the Court order the government to  
14 provide the specific discovery listed above.

15 First, the items listed above are documents, statements, agents' reports,  
16 and tangible evidence favorable to the defendant on the issue of guilt and/or  
17 which affects the credibility of the government's case. Brady v. Maryland, 373  
18 U.S. § 83 (1963). Impeachment as well as exculpatory evidence falls within  
19 Brady's definition of evidence favorable to the accused. United States v. Bagley,  
20 473 U.S. 667 (1985); United States v. Agurs, 427 U.S. 97 (1976).

21 Furthermore, the evidence listed above is, in part, evidence seized as a  
22 result of any search, either warrantless or with a warrant, and is discoverable  
23 under Fed. R. Crim. P.16(a)(1)(C).

24 Furthermore, the items listed above are requested also under Fed. R.  
25 Crim. P. 16(a)(2)(C), which provides the defense with the opportunity to inspect  
26 and copy as well as test, if necessary, all other documents and tangible objects,  
27 including photographs, books, papers, documents, photographs, of building or  
28

1 places or copies of portions thereof that are material to the defense or intended  
2 for use in the government's case-in-chief, or were obtained from or belong to the  
3 defendant.

4 Furthermore, Ms. Abalos requests information regarding the registered  
5 owner of the red Dodge Stratus. If the government has evidence that a  
6 prospective witness is under investigation by federal, state or local authorities  
7 for any criminal conduct that evidence is discoverable and must be provided to  
8 the defense. United States v. Chitty, 760 F.2d 425 (2d Cir.) cert. denied, 474 U.S.  
9 945 (1985). Although the registered owner may not be a prospective *government*  
10 witness, any investigation of that registered owner would be exculpatory under  
11 Brady v. Maryland, *supra*.

12 In addition, the previous motion filed by Ms. Abalos did not request a  
13 summary of expert testimony. Under Rule 16(a)(1)(E):

14 At the defendant's request, the government shall  
15 disclose to the defendant a written summary of  
16 testimony the government intends to use under Rules  
17 702, 703 or 705 of the Federal Rules of Evidence during  
18 its case-in-chief at trial. This summary must describe  
19 the witness' opinions, the basis and the reasons  
20 therefore, and the witness' qualifications.

21 Ms. Abalos specifically requests the government give her a written  
22 summary and notice of any expert testimony that the government intends to  
23 introduce. This request includes any government agent who will testify to any  
24 opinion.

### 25 **III.**

### 26 **THIS COURT SHOULD HOLD A FURTHER MOTIONS** 27 **HEARING**

28 Counsel for Ms. Abalos needs to evaluate and potentially litigate motions  
based on the above listed discovery. Those motions may include motions to

1 suppress. Thus, this Court should set this case for an additional motions  
2 hearing after the government provides all the discovery in this case.

3 **IV.**

4 **CONCLUSION**

5 For the foregoing reasons, this Court should grant the above motions.

6  
7 Dated: July 21, 2008

Respectfully submitted,

8 /S/ Knut S. Johnson  
9 **Knut S. Johnson, Esq.**

10 /S/ Jerrold Bodow  
11 **Jerrold Bodow, Esq.**